



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/690,473	10/18/2000	Brett Haarala	06530-0020	1891

22852 7590 12/19/2006
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

HUH, BENJAMIN

ART UNIT	PAPER NUMBER
----------	--------------

3767

MAIL DATE	DELIVERY MODE
-----------	---------------

12/19/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/690,473

Applicant(s)

HAARALA ET AL.

Examiner

Benjamin Huh

Art Unit

3767

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: claims 115-117. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 60, 61, 63-68, 70-72, 74-79, 113 and 114.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

**KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER**

Kevin C. Sirmons

Continuation of 11. does NOT place the application in condition for allowance because: The applicant claims that the new grounds of rejection were not necessitated by amendment with respect to claims 113 & 114, the examiner disagrees. The previous claims utilized wording that required dependency of the contents of claims 60 & 70 respectively, now due to the amendments to claim 60 & 70 which were then incorporated into claims 113 & 114 there was a change in scope, more specifically the addition of the access/entry site to be located on the body portion as well as the other added limitations. Therefore, the new ground of rejection was necessitated by amendment and seen to be proper. Applicant also argues that Villani does not disclose all the limitations of the claims, the examiner disagrees. The access site is seen to be element 6 which is located on the body portion and has access to the reservoir from that location without passing through the entry site since it is already located by the reservoir, the lumen produced by 6 is the site itself which is still seen to be element 6. The interior of element 6 would overlap with the portion of the reservoir and also be deemed to provide access in that manner. The entry site is seen to be element 7 which can provide entry to the device and is located on the body portion 2. Applicant argues that Villani does not disclose a guidewire or stylet, the needle can be seen as a guidewire or a stylet, since applicant does not specifically define a guidewire or stylet and therefore under the broadest reasonable definition of the terms, element 13 can be seen as a guidewire/stylet. The applicant argues that Hilger does not disclose all of the features recited in the claims, the examiner disagrees. The Hilger reference does disclose an entry site, in the action it states that the entry site is defined by element 12, whereupon looking at the reference the site can be clearly seen by element 12 for entry and also wherein the lumen can be seen to be disposed opposite an outlet, the term opposite being seen to be fairly broad and therefore the reference being interpreted to have the outlet opposite the entry site. Applicant argues that the Hilger reference can not permit insertion of one of a guidewire or a stylet through the body portion, the examiner disagrees. the examiner clearly states that due to the fact that guidewires and stylets are well known and vary in length, diameter, and material that the instant device would be fully capable of allowing the insertion of a guidewire/stylet through the body portion and into an outlet. The applicant argues with the examiner with respect to the outlet, the applicant clearly points out the outlet and therefore shows that Hilger does disclose an outlet configured to be in flow communication with a reservoir. The applicant argues that the Hilger reference does not disclose entry and access to the same reservoir, the examiner disagrees. The claims state that the reservoir be defined by the body portion and therefore the reservoir is seen to be the areas defined by the body portion for the reservoir.